

ASSEMBLY BILL

No. 1868

Introduced by Assembly Member Jones

February 12, 2010

An act to amend Section 10291.5 of, and to add Section 10116.2 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1868, as introduced, Jones. Insurance: life: disability: discretionary clauses.

Existing law generally regulates life and disability insurance policies, and requires the Insurance Commissioner to disapprove any disability policy for issuance or delivery in this state in specified circumstances.

This bill would prohibit a policy, contract, certificate, or agreement offered or issued in this state providing for life insurance, disability insurance, or disability income protection coverage from containing a provision purporting to reserve discretionary authority to the insurer, or an agent of the insurer, to interpret the terms of the policy contract, certificate, or agreement, or providing standards of interpretation or review that are inconsistent with the laws of this state. The bill would require the commissioner to disapprove any disability policy that contains a provision of this type.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10116.2 is added to the Insurance Code,
2 to read:

1 10116.2. A policy, contract, certificate, or agreement offered
2 or issued in this state providing for life insurance, disability
3 insurance, or disability income protection coverage shall not
4 contain a provision purporting to reserve discretionary authority
5 to the insurer, or an agent of the insurer, to interpret the terms of
6 the policy contract, certificate, or agreement, or to provide
7 standards of interpretation or review that are inconsistent with the
8 laws of this state.

9 SEC. 2. Section 10291.5 of the Insurance Code is amended to
10 read:

11 10291.5. (a) The purpose of this section is to achieve both of
12 the following:

13 (1) Prevent, in respect to disability insurance, fraud, unfair trade
14 practices, and insurance economically unsound to the insured.

15 (2) Assure that the language of all insurance policies can be
16 readily understood and interpreted.

17 (b) The commissioner shall not approve any disability policy
18 for ~~insurance~~ *issuance* or delivery in this state in any of the
19 following circumstances:

20 (1) If the commissioner finds that it contains any provision, or
21 has any label, description of its contents, title, heading, backing,
22 or other indication of its provisions ~~which~~ *that* is unintelligible,
23 uncertain, ambiguous, or abstruse, or likely to mislead a person to
24 whom the policy is offered, delivered or issued.

25 (2) If it contains any provision for payment at a rate, or in an
26 amount ~~(other, other than the product of rate times the periods for~~
27 ~~which payments are promised)~~ *promised*, for loss caused by
28 particular event or events ~~(as, as distinguished from character of~~
29 ~~physical injury or illness of the insured)~~ *insured*, more than triple
30 the lowest rate, or amount, promised in the policy for the same
31 loss caused by any other event or events ~~(loss, loss caused by~~
32 ~~sickness, loss caused by accident, and different degrees of disability~~
33 ~~each being considered, for the purpose of this paragraph, a different~~
34 ~~loss)~~ *loss*; or if it contains any provision for payment for any
35 confining loss of time at a rate more than six times the least rate
36 payable for any partial loss of time or more than twice the least
37 rate payable for any nonconfining total loss of time; or if it contains
38 any provision for payment for any nonconfining total loss of time
39 at a rate more than three times the least rate payable for any partial
40 loss of time.

1 (3) If it contains any provision for payment for disability caused
2 by particular event or events ~~(as, as distinguished from character~~
3 of physical injury or illness of the ~~insured)~~ *insured*, payable for a
4 term more than twice the least term of payment provided by the
5 policy for the same degree of disability caused by any other event
6 or events; or if it contains any benefit for total nonconfining
7 disability payable for lifetime or for more than 12 months and any
8 benefit for partial disability, unless the benefit for partial disability
9 is payable for at least three months; or if it contains any benefit
10 for total confining disability payable for lifetime or for more than
11 12 months, unless it also contains benefit for total nonconfining
12 disability caused by the same event or events payable for at least
13 three months, and, if it also contains any benefit for partial
14 disability, unless the benefit for partial disability is payable for at
15 least three months. The provisions of this paragraph shall apply
16 separately to accident benefits and to sickness benefits.

17 (4) If it contains provision or provisions ~~which~~ *that* would have
18 the effect, upon any termination of the policy, of reducing or ending
19 the liability as the insurer would have, but for the termination, for
20 loss of time resulting from *an* accident occurring while the policy
21 is in force or for loss of time commencing while the policy is in
22 force and resulting from sickness contracted while the policy is in
23 force or for other losses resulting from *an* accident occurring or
24 sickness contracted while the policy is in force, and also contains
25 provision or provisions reserving to the insurer the right to cancel
26 or refuse to renew the policy, unless it also contains other provision
27 or provisions the effect of which is that termination of the policy
28 as the result of the exercise by the insurer of ~~any such~~ *that* right
29 shall not reduce or end the liability in respect to the hereinafter
30 specified losses as the insurer would have had under the policy,
31 including its other limitations, conditions, reductions, and
32 restrictions, had the policy not been so terminated.

33 The specified losses referred to in the preceding paragraph are:

34 (i) Loss of time which commences while the policy is in force
35 and results from sickness contracted while the policy is in force.

36 (ii) Loss of time ~~which~~ *that* commences within 20 days
37 following and results from *an* accident occurring while the policy
38 is in force.

39 (iii) Losses ~~which~~ *that* result from *an* accident occurring or
40 sickness contracted while the policy is in force and arise out of the

1 care or treatment of illness or injury and ~~which~~ *that* occur within
2 90 days from the termination of the policy or during a period of
3 continuous compensable loss or losses which period commences
4 prior to the end of ~~such~~ *the* 90 days.

5 (iv) Losses other than those specified in clause (i), (ii), or (iii)
6 of this paragraph ~~which~~ *that* result from *an* accident occurring or
7 sickness contracted while the policy is in force and ~~which~~ *the* losses
8 occur within 90 days following the accident or the contraction of
9 the sickness.

10 (5) If by any caption, label, title, or description of contents the
11 policy states, implies, or infers without reasonable qualification
12 that it provides loss of time indemnity for lifetime, or for any period
13 of more than two years, if the loss of time indemnity is made
14 payable only when house confined or only under special
15 contingencies not applicable to other total loss of time indemnity.

16 (6) If it contains any benefit for total confining disability payable
17 only upon condition that the confinement be of an abnormally
18 restricted nature unless the caption of the part containing ~~any such~~
19 *that* benefit is accurately descriptive of the nature of the
20 confinement required and unless, if the policy has a description of
21 contents, label, or title, at least one of them contain reference to
22 the nature of the confinement required.

23 (7) (A) If, irrespective of the premium charged ~~therefor~~, any
24 benefit of the policy is, or the benefits of the policy as a whole are,
25 not sufficient to be of real economic value to the insured.

26 (B) In determining whether benefits are of real economic value
27 to the insured, the commissioner shall not differentiate between
28 insureds of the same or similar economic or occupational classes
29 and shall give due consideration to all of the following:

30 (i) The right of insurers to exercise sound underwriting judgment
31 in the selection and amounts of risks.

32 (ii) Amount of benefit, length of time of benefit, nature or extent
33 of benefit, or any combination of those factors.

34 (iii) The relative value in purchasing power of the benefit or
35 benefits.

36 (iv) Differences in insurance issued on an industrial or other
37 special basis.

38 (C) To be of real economic value, it shall not be necessary that
39 any benefit or benefits cover the full amount of any loss ~~which~~

1 *that* might be suffered by reason of the occurrence of any hazard
2 or event insured against.

3 (8) If it substitutes a specified indemnity upon the occurrence
4 of accidental death for any benefit of the policy, other than a
5 specified indemnity for dismemberment, which would accrue prior
6 to the time of that death or if it contains any provision which has
7 the effect, other than at the election of the insured exercisable
8 within not less than 20 days in the case of benefits specifically
9 limited to the loss by removal of one or more fingers or one or
10 more toes or within not less than 90 days in all other cases, of
11 doing any of the following:

12 (A) Of substituting, upon the occurrence of the loss of both
13 hands, both feet, one hand and one foot, the sight of both eyes or
14 the sight of one eye and the loss of one hand or one foot, some
15 specified indemnity for any or all benefits under the policy unless
16 the indemnity so specified is equal to or greater than the total of
17 the benefit or benefits for which ~~such~~ *the* specified indemnity is
18 substituted and which, assuming in all cases that the insured would
19 continue to live, could possibly accrue within four years from the
20 date of such dismemberment under all other provisions of the
21 policy applicable to the particular event or events—~~(as, as~~
22 ~~distinguished from character of physical injury or illness)~~ *illness*,
23 causing the dismemberment.

24 (B) Of substituting, upon the occurrence of any other
25 dismemberment some specified indemnity for any or all benefits
26 under the policy unless the indemnity so specified is equal to or
27 greater than one-fourth of the total of the benefit or benefits for
28 which the specified indemnity is substituted and which, assuming
29 in all cases that the insured would continue to live, could possibly
30 accrue within four years from the date of the dismemberment under
31 all other provisions of the policy applicable to the particular event
32 or events—~~(as, as~~ distinguished from character of physical injury
33 ~~or illness)~~ *illness*, causing the dismemberment.

34 (C) Of substituting a specified indemnity upon the occurrence
35 of any dismemberment for any benefit of the policy ~~which~~ *that*
36 would accrue prior to the time of dismemberment.

37 As used in this section, loss of a hand shall be severance at or
38 above the wrist joint, loss of a foot shall be severance at or above
39 the ankle joint, loss of an eye shall be the irrecoverable loss of the

1 entire sight thereof, loss of a finger shall mean at least one entire
2 phalanx thereof and loss of a toe the entire toe.

3 (9) If it contains provision, other than as provided in Section
4 10369.3, reducing any original benefit more than 50 percent on
5 account of age of the insured.

6 (10) If the insuring clause or clauses contain no reference to the
7 exceptions, limitations, and reductions—~~(if any)~~, *if any*, or no
8 specific reference to, or brief statement of, each abnormally
9 restrictive exception, limitation, or reduction.

10 (11) If it contains benefit or benefits for loss or losses from
11 specified diseases only unless:

12 (A) All of the diseases so specified in each provision granting
13 the benefits fall within some general classification based upon the
14 following:

15 (i) The part or system of the human body principally subject to
16 all ~~such~~ *those* diseases.

17 (ii) The similarity in nature or cause of ~~such~~ *those* diseases.

18 (iii) In case of diseases of an unusually serious nature and
19 protracted course of treatment, the common characteristics of all
20 ~~such~~ *those* diseases with respect to severity of affliction and cost
21 of treatment.

22 (B) The policy is entitled and each provision granting the
23 benefits is separately captioned in clearly understandable words
24 so as to accurately describe the classification of diseases covered
25 and expressly point out, when that is the case, that not all diseases
26 of the classification are covered.

27 (12) If it does not contain provision for a grace period of at least
28 the number of days specified below for the payment of each
29 premium falling due after the first premium, during which grace
30 period the policy shall continue in force provided, that the grace
31 period to be included in the policy shall be not less than seven days
32 for policies providing for weekly payment of premium, not less
33 than 10 days for policies providing for monthly payment of
34 premium and not less than 31 days for all other policies.

35 (13) *If it includes a provision purporting to reserve discretionary*
36 *authority to the insurer, or an agent of the insurer, to interpret the*
37 *terms of the policy contract, certificate, or agreement, or to provide*
38 *standards of interpretation or review that are inconsistent with*
39 *the laws of this state.*

40 ~~(13)~~

1 (14) If it fails to conform in any respect with any law of this
2 state.

3 (c) The commissioner shall not approve any disability policy
4 covering hospital, medical, or surgical expenses unless the
5 commissioner finds that the application conforms to both of the
6 following requirements:

7 (1) All applications for disability insurance covering hospital,
8 medical, or surgical expenses, except that which is guaranteed
9 issue, which include questions relating to medical conditions, shall
10 contain clear and unambiguous questions designed to ascertain the
11 health condition or history of the applicant.

12 (2) The application questions designed to ascertain the health
13 condition or history of the applicant shall be based on medical
14 information that is reasonable and necessary for medical
15 underwriting purposes. The application shall include a prominently
16 displayed notice that states:

17
18 “California law prohibits an HIV test from being required or
19 used by health insurance companies as a condition of obtaining
20 health insurance coverage.”

21
22 (d) Nothing in this section authorizes the commissioner to
23 establish or require a single or standard application form for
24 application questions.

25 (e) The commissioner may, from time to time as conditions
26 warrant, after notice and hearing, ~~promulgate such~~ *adopt* reasonable
27 rules and regulations, and amendments and additions thereto, as
28 are necessary or convenient, to establish, in advance of the
29 submission of policies, the standard or standards conforming to
30 subdivision (b), by which he or she shall disapprove or withdraw
31 approval of any disability policy.

32 ~~In promulgating any such adopting that~~ rule or regulation the
33 commissioner shall give consideration to the criteria herein
34 established and to the desirability of approving for use in policies
35 in this state uniform provisions, nationwide or otherwise, and is
36 hereby granted the authority to consult with insurance authorities
37 of any other state and their representatives individually or by way
38 of convention or committee, to seek agreement upon those
39 provisions.

1 Any such rule or regulation shall be ~~promulgated~~ *adopted* in
2 accordance with the procedure provided in Chapter 3.5
3 (commencing with Section 11340) of Part 1 of Division 3 of Title
4 2 of the Government Code.

5 (f) The commissioner may withdraw approval of filing of any
6 policy or other document or matter required to be approved by the
7 commissioner, or filed with him or her, by this chapter when the
8 commissioner would be authorized to disapprove or refuse filing
9 of the same if originally submitted at the time of the action of
10 withdrawal.

11 ~~Any such~~

12 *The* withdrawal shall be in writing and shall specify *the* reasons.
13 An insurer adversely affected by any such withdrawal may, within
14 a period of 30 days following mailing or delivery of the writing
15 containing the withdrawal, by written request secure a hearing to
16 determine whether the withdrawal should be annulled, modified,
17 or confirmed. Unless, at any time, it is mutually agreed to the
18 contrary, a hearing shall be granted and commenced within 30
19 days following filing of the request and shall proceed with
20 reasonable dispatch to determination. Unless the commissioner in
21 writing in the withdrawal, or subsequent thereto, grants an
22 extension, ~~any such~~ *the* withdrawal shall, in the absence of ~~any~~
23 ~~such~~ *a* request, be effective, prospectively and not retroactively,
24 on the 91st day following the mailing or delivery of the withdrawal,
25 and, if request for the hearing is filed, on the 91st day following
26 mailing or delivery of written notice of the commissioner's
27 determination.

28 (g) No proceeding under this section is subject to Chapter 5
29 (commencing with Section 11500) of Part 1 of Division 3 of Title
30 2 of the Government Code.

31 (h) Except as provided in subdivision (k), any action taken by
32 the commissioner under this section is subject to review by the
33 courts of this state and proceedings on review shall be in
34 accordance with the Code of Civil Procedure.

35 Notwithstanding any other provision of law to the contrary,
36 petition for ~~any such~~ *a* review may be filed at any time before the
37 effective date of the action taken by the commissioner. No action
38 of the commissioner shall become effective before the expiration
39 of 20 days after written notice and a copy thereof are mailed or
40 delivered to the person adversely affected, and any action so

1 submitted for review shall not become effective for a further period
2 of 15 days after the filing of the petition in court. The court may
3 stay the effectiveness thereof for a longer period.

4 (i) This section shall be liberally construed to effectuate the
5 purpose and intentions herein stated; but shall not be construed to
6 grant the commissioner power to fix or regulate rates for disability
7 insurance or prescribe a standard form of disability policy, except
8 that the commissioner shall prescribe a standard supplementary
9 disclosure form for presentation with all disability insurance
10 policies, pursuant to Section 10603.

11 (j) This section shall be effective on and after July 1, 1950, as
12 to all policies thereafter submitted and on and after January 1,
13 1951, the commissioner may withdraw approval pursuant to
14 subdivision (d) of any policy thereafter issued or delivered in this
15 state irrespective of when its form may have been submitted or
16 approved, and prior to those dates the provisions of law in effect
17 on January 1, 1949, shall apply to those policies.

18 (k) Any ~~such~~ policy issued by an insurer to an insured on a form
19 approved by the commissioner, and in accordance with the
20 conditions, if any, contained in the approval, at a time when that
21 approval is outstanding shall, as between the insurer and the
22 insured, or any person claiming under the policy, be conclusively
23 presumed to comply with, and conform to, this section.